UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

BEVERLY ENTERPRISES – PENNSYLVANIA, INC., D/B/A BEVERLY HEALTHCARE - SHIPPENVILLE[1]

Employer

Case 6-RC-11832

and

UNITED MINE WORKERS OF AMERICA, AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition[2] duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Dalia Belinkoff, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.[3]

Upon the entire record[4] in this case, the Regional Director finds:

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[1] The name of the Employer appears as amended at the hearing.

[2] On May 25, 2000, the Petitioner herein filed separate petitions for two units at the same facility of the Employer. On May 25, 2000, the Regional Director issued an Order Consolidating Cases 6-RC-11832 and 6-RC-11833. Prior to the opening of the hearing in those cases, the parties entered into a Stipulated Election Agreement in Case 6-RC-11833, and thereafter, the parties developed the record only as it relates to Case 6-RC-11832. On June 8, 2000, the Regional Director issued an Order Severing Cases 6-RC-11832 and 6-RC-11833.

[3] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 l4th Street, N.W., Washington, D.C. 20570-000l. This request must be received by the Board in Washington by July 13, 2000.

[4] The Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time licensed practical nurses employed by the Employer at its Shippenville, Pennsylvania, facility; excluding the Administrator, Director of Nursing, Assistant Director of Nursing, registered nurses, activities director, social service director, dementia unit director, maintenance supervisor, environmental services supervisor, dietary service supervisor and dieticians, bookeepers, all service and maintenance employees, all office clerical employees, registered nurse assessment coordinator, central supply/medical records clerk and guards, professional employees and other supervisors as defined in the Act.[5] The Employer, contrary to the Petitioner, contends that the petitioned-for unit is inappropriate because the licensed practical nurses ("LPNs") are statutory supervisors.[6] There are approximately 23 LPNs in the petitioned-for unit. There is no history of collective-bargaining for any of the employees involved herein.[7]

[5] The unit description appears as amended at the hearing.

[6] The Employer does not raise any issues regarding the appropriateness of the proposed unit other than the supervisory status of the LPNs.

[7] The Petitioner filed a petition on September 8, 1998 in Case 6-RC-11574 for a unit almost identical to the present one. A hearing in that case was held on September 21 and 22, 1998, and a Decision and Direction of Election issued on October 15, 1998, wherein the LPNs were found not to be statutory supervisors. At the hearing in the instant matter, the hearing officer took administrative notice of the entire record in Case 6-RC-11574.

The Employer operates a 120 bed skilled nursing facility in Shippenville, Pennsylvania, which includes intermediate care, skilled nursing and a dementia unit. The facility operates 24 hours per day, seven days per week, on three shifts. Eric Funk, administrator, or executive director, is responsible for the overall operation of the facility. Wendy Haws, Director of Nursing ("DON") and Janet Lauer, Assistant Director of Nursing ("ADON") report to Funk and are responsible for the nursing department at the facility. The nursing department consists of approximately 10 registered nurses ("RNs"), 23 LPNs and 40 certified nursing assistants ("CNAs").

Haws and Lauer are only scheduled to work weekdays; however, the DON, the ADON and the RN assessment coordinator rotate the responsibility of being on call when none of them are present at the facility. There is always an RN supervisor on duty at the facility. The facility is divided into three areas for the purpose of job assignments, referred to as the skilled wing, A wing and the dementia unit. On day and afternoon shifts, there is one LPN charge nurse on the skilled unit, two LPN charge nurses on A wing, which is divided into A-1 and A-2, and one or two LPN charge nurses on the dementia unit. On the night shift, the RN supervisor acts as a charge nurse on the skilled wing, and one LPN charge nurse covers the entire A wing.[8] The number of CNAs assigned to each charge nurse varies by shift and location.

The LPN charge nurses are primarily responsible for patient care. They spend virtually their entire work shift directly involved in patient care, administering medications, charting, assisting CNAs in the daily care of patients, communicating with families of patients and so forth. LPNs have no part in the hiring and training of CNAs. The scheduling for the entire nursing department is done by the ADON for a two week period. This biweekly schedule assigns LPNs and CNAs to the days, shift and unit they will work during that time period. Any requests for leave, whether personal, sick or vacation leave, are made to the DON or the ADON. If an individual calls off for their shift, such calls are made to the RN supervisor on

[8] The record does not reflect who acts as the charge nurse in the dementia unit during the night shift.

duty.[9] The LPNs have no responsibility for finding coverage for call-offs. The LPNs have no authority independently to authorize either overtime or leaving early. Such situations must be approved by the ADON or the RN supervisor.

The LPN gives out the assignments to the CNAs based on the biweekly schedule generated by the ADON. Each wing or unit is divided into groups of rooms, which are then divided among the CNAs. There are regular job tasks to be performed for each section of rooms assigned. Likewise, lunch and breaks are predetermined according to the section of rooms assigned to the CNA. The room sections are usually assigned to the CNAs for the two week period, with part-time CNAs filling in on their days off. Although there are occasional requests by a CNA to switch room assignments, such requests are infrequent. The LPN can make such changes in the interest of the patient care; however, in general, the Employer prefers that the CNAs rotate among all of the rooms so that they are familiar to all of the residents. The CNAs sometimes switch their lunches or breaks, and notify the LPN when they do this. This notification appears to be done so that the LPN is aware of the switch, not for approval by the LPN.

The LPNs fill out evaluations of the CNAs with whom they work. These are completed annually, and also at the end of a 90-day probationary period for newly hired CNAs. The same form is used for both the annual and the probationary evaluations. The form contains numerous skills and personality traits that are each given a numerical rating by the LPN. The numbers are totaled, which results in the rating of the CNA as falling into the classification of "exceeds expectations", "meets all and exceeds most expectations", "meets expectations" or "needs improvement". On the last page, there are three choices for the LPN with regard to probationary employees, to recommend retention, review again in 30 days or termination. This area of the evaluation is not completed when an annual evaluation is prepared.

[9] An LPN might take a message for the RN supervisor if the supervisor is unavailable to speak on the telephone when an individual calls off. However, in that event, the LPN merely relays the message regarding the call-off to the RN supervisor.

The form has a signature line for the individual being evaluated and one for the LPN filling out the evaluation. When an LPN fills out an evaluation, whether annual or probationary, the form is turned in for review by the ADON or the DON. While the ADON or DON normally does not write her own comments on the form, she advises the LPN whether the evaluation is acceptable or whether there should be changes or additions made to it. After the ADON or DON returns the form to the LPN , the LPN presents the evaluation to the CNA, who reviews it, adds any comments and signs the form. The evaluation is then taken by the LPN to the ADON to be filed in the individual's personnel file in the office.

The annual evaluations have no effect on the CNAs' job status. Raises are given automatically twice yearly and are not based on merit. The evaluation is described by DON Haws as a learning tool for the CNAs regarding their patient care skills. There was no evidence that any CNA has ever been demoted, promoted or terminated as a result of an evaluation by an LPN.[10] While administrator Funk testified that evaluations could play a role in temporary or permanent layoffs, this has never occurred to date.

With regard to the probationary evaluations, the process is similar to that already described above with the annual evaluations, except that the LPN also recommends whether to retain, extend the probationary period or terminate the new employee. The record contains one evaluation completed by an LPN which recommends that the CNA have an additional 30-day probationary period, but there was no evidence of any probationary CNA who was terminated as a result of a recommendation by an LPN. The probationary evaluations have no effect on the wages or employment of the CNAs.

[10] Administrator Funk testified that a CNA had once been given a promotion to transportation coordinator, in part at least, because she had good evaluations. However, there was no evidence that this individual was competing with any other employee for that position, or that the evaluation was determinative in the decision to award her that position. Rather, Funk testified that she had been "dislodged" from her previous position. Funk did not explain the details of this situation. Funk further testified that the decision to offer the transportation position to the CNA was made by him. This was the only example presented in the record of the evaluation having any role in the determination of the job status of CNAs.

The Employer has a disciplinary policy which has two categories of seriousness of offenses. Category one offenses are the more serious ones, which will result in immediate suspension and/or discharge following an investigation by the administrator. Category two violations are less serious offenses, which are subject to a progressive discipline policy. This progressive discipline policy has four steps, three written warnings and then suspension pending investigation.[11] Any category two discipline received by an employee is removed from the personnel file after one year. Thus, an employee must progress through all four steps of the procedure within 12 months to be terminated.

If an LPN observes a CNA violating the Employer's policies and procedures, the LPN uses a two page form called an "Associate Memorandum". The LPN fills out the name of the CNA on the first page. The rest of the page, which describes the type and category of the offense, as well as the CNA's previous disciplinary offenses, is filled out by the ADON. The LPN fills in the second page of the form with a narrative describing the conduct at issue, and what corrective action by the CNA is recommended. After presenting the form to the individual for signature, the LPN turns the form in to the ADON. The LPN does not have any role in deciding what, if any, discipline should issue as a result of the written memorandum. Although the record reflects that no CNA has reached the fourth level of discipline, suspension, in the last several years, the record establishes that the DON and/or the ADON would investigate the matter if an employee were to reach that level.[12]

ADON Lauer testified that, on occasion, CNAs have come directly to her to complain about various problems at the facility. Lauer stated that she usually advises the CNA to direct their complaint to the LPNs when the complaint involves issues related to patient care.

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[11] There is a separate attendance policy which functions independent of the disciplinary policy described herein.

[12] ADON Lauer, who has held her position since 1992, testified that during her tenure as ADON, no LPN has ever sent a CNA home.

The record reflects that the LPNs and RNs from the Employer's facility attended a company-sponsored seminar at another of the Employer's facilities in Clarion, Pennsylvania, in about June 1999. This seminar reviewed policies, supervisory skills, communication skills, and other such topics. These sessions were also attended by employees of the Clarion facility.[13]

The Employer has regular management meetings which are not attended by LPNs. There are also daily admissions meetings, which also are not normally attended by LPNs.[14] There are monthly meetings in the nursing department for RNs and LPNs, where issues regarding such topics as paperwork and family members are discussed.

As described previously, the Employer contends that the LPNs are supervisors within the meaning of the Act. Specifically, the Employer asserts that the LPNs, in their positions as charge nurses, evaluate both probationary and permanent CNAs, adjust CNA grievances, discipline CNAs, assign and direct the work of CNAs and are held out as supervisors. It is undisputed that the LPNs do not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge or reward employees, or to effectively recommend such actions.

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[13] At the hearing, the Employer attempted to enter Employer's Exhibit 13, which was a group of unsigned forms filled out by participants evaluating the company-sponsored seminar held in Clarion, PA. After some testimony and discussion regarding this exhibit, the hearing officer placed Employer's Exhibit 13 in a rejected exhibit file, on the basis that the exhibit lacked probative value because it did not appear to be clear whether the forms were filled out only by employees from the Employer's Shippenville, Pennsylvania, facility, or whether the exhibit also contained forms filled out by employees of the Clarion, Pennsylvania, facility. The court reporter mistakenly placed rejected Employer's Exhibit 13 in the file containing the exhibits received into evidence by the hearing officer.

In its brief, the Employer asserts that the hearing officer erred in denying the admission of this exhibit, inasmuch as the foundation establishes that only Shippenville employees attended the 6/21/99 training, and requests that the exhibit be admitted and considered as evidence. The record reflects that the Employer mistakenly refers to the date as 6/21/99, when the testimony at the hearing establishes that the forms at issue were filled out at the seminar which was held on 6/28/99, which was, in fact, attended only by employees from the Shippenville facility. However, based on the documents in Employer's Exhibit 12, which contains the sign-in sheets from the seminar held on 6/28/99, the record reflects that the Shippenville employees who attended the seminar were both RNs and LPNs. Since the evaluation forms at issue are unsigned, it is impossible to know which of the forms were filled out by the RNs and which ones were filled out by the LPNs. Therefore, I am denying the Employer's request to admit Employer's Exhibit 13 inasmuch as it lacks probative value since it is impossible to establish which forms were filled out by the LPNs. Accordingly, Employer's Exhibit 13 shall remain as a rejected exhibit.

[14] The record does not reflect exactly who attends these meetings.

To meet the statutory definition of a supervisor, an individual needs to possess only one of the specific criteria listed in Section 2(11) of the Act, or the authority to effectively recommend such action, so long as the performance of that function is not routine but requires the use of independent judgment. Providence Hospital, 320 NLRB 717 (1996), enfd. 121 F.3d 548 (9th Cir. 1997); Nymed, Inc., d/b/a Ten Broeck Commons, 320 NLRB 806, 809 (1996). This test has been traditionally used for supervisory status of all employees, and is also used to determine the supervisory status of health care professionals. The Board has described the distinction between independent judgment and merely routine judgment as that between the "essence of professionalism" which requires the "exercise of expert judgment" on the one hand, and the "essence of supervision" which requires the "exercise of independent judgment" on the other. Providence Hospital, supra at 730. Thus, it is recognized that an individual who exercises some supervisory authority in only a routine, clerical or perfunctory manner should not be found to be a supervisor since the exercise of such authority occurs without the use of any significant discretion. See Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986); Quadrex Environmental Co., 308 NLRB 101, 102 (1992). The Board has long held that the party contending that an individual possesses supervisory status has the burden of proving it. The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Bowne of Houston, Inc., supra.

The Employer first contends that the evaluation of CNAs by the LPNs is an indicium of their supervisory status. Section 2(11) of the Act does not enumerate "evaluate" as one of the indicia of supervisory status. Therefore, it is well established that the ability to evaluate employees, without the evaluation by itself affecting the wages or job status of the individual being evaluated, is insufficient to establish supervisory authority. Harborside Healthcare, Inc., 330 NLRB No. 191, slip op. at 1 (April 24, 2000); Elmhurst Extended Care Facilities, 329 NLRB No. 55, slip op. at 2 (September 30, 2000); Passavant Health Center, 284 NLRB 887, 891 (1987).

With regard to the evaluation of probationary employees, it appears that the LPNs' evaluations do not have any effect on the CNA's employment or wages. Wage increases are

automatic and are unrelated to the opinions of the LPNs in the evaluation. While there is evidence that LPNs have occasionally recommended that a CNA's probationary period be extended for 30 more days, there is no evidence that an LPN has ever independently recommended termination of a probationary employee.[15] It appears that the evaluation is used primarily as a learning tool for the CNA to understand the strengths and weaknesses of her skills. Moreover, the record affirmatively establishes that the evaluations of probationary CNAs prepared by the LPNs are subject to independent review and modification by the ADON.

In two very recent cases, the Board found, in very similar circumstances, that the evaluation of probationary employees by LPNs was not an indicium of supervisory status. Harborside Healthcare, Inc., supra at 2; Elmhurst Extended Care Facilities, supra at 2. In each of these cases, the LPN filled out an evaluation form, with a recommendation as to the skill level of the new employee. As in the present case, the Board found that the mere possibility that an LPN's recommendation could lead to termination was both speculative and lacking in specificity. Harborside Healthcare, Inc., supra at 2. The Board noted that when an LPN evaluates a probationary employee "…she is doing so in a manner similar to that of the more experienced employee who conducts tests and grades the skills of new hires against recognized standards or guidelines." Elmhurst Extended Care Facilities, supra at 2 – 3. Thus, the Board concluded that there was insufficient evidence that the LPNs' evaluations affected the status of the employees being evaluated. Harborside Healthcare, Inc., supra at 2.

Similarly, in the instant case, the evaluations of new employees have no effect on their wages or employment. As in the cases cited above, the evaluations are utilized by the Employer to measure whether or not the new CNA has successfully learned the skills and procedures needed to carry out the job duties required. The Employer has failed in its burden to

[15] In its brief, the Employer states that the record contains evidence of a termination of a probationary employee based on the evaluation by an LPN. The only evidence of this action is from the record in the previous case, in 1998. However, at that time, it was found that such actions were subject to independent review and modification by the ADON. There is no record evidence that there has been a recommendation by an LPN not to retain a probationary CNA since that time.

establish that the recommendations of the LPNs in the evaluation of probationary employees in themselves affect the CNAs' wages or employment. Accordingly, based on the above and the record as a whole,[16] I find that the evaluation of probationary CNAs does not confer supervisory status on the LPNs herein.

With regard to annual evaluations, it is also evident that these evaluations have no effect on the employees' wages or employment. It is clear that wage increases are completely unrelated to evaluations, since they are given automatically on a six month schedule. Further, while the Employer asserts that evaluations might be a factor in layoffs, reductions in force, or promotions,[17] there is no specific evidence of these situations ever arising. Such assertions are speculative and are not persuasive. Harborside Healthcare, Inc., supra at 2. The Board has held that where evaluations are not directly correlated with either job retention or wage increases, they are not effective recommendations, and thus are not evidence of supervisory authority within the meaning of the Act. Harborside Healthcare, Inc., supra at 2, citing Elmhurst

[16] The Employer relies on three cases in support of its contention that the evaluation of probationary employees is an indicium of supervisory status. First Healthcare Corporation d/b/a Hillhaven Kona Healthcare Center, 323 NLRB 1171 (1997) is distinguishable in that there was a merit raise directly determined by the 90-day evaluations prepared by the LPNs in that case, while there are no raises related to the evaluations of probationary employees herein. Further, unlike the present case, in Hillhaven Kona Healthcare Center, the Board found that the charge nurses did not need the approval of higher management before issuing the evaluation or presenting an evaluation to an employee. The two other cases cited by the Employer, Pine Manor Nursing Center, 270 NLRB 1008 (1984) and Colonial Manor 1977, Inc. d/b/a Wedgewood Health Care, 267 NLRB 525 (1983) are both older cases wherein LPNs were found to be supervisors based on a variety of indicia, one of which was evaluating new probationary employees. In Pine Manor Nursing Center, supra, however, the recommendations by LPNs as to whether a probationary employee should be retained or not was followed without any further investigation, whereas herein, there is no evidence that this would occur, inasmuch as there was no record evidence that an LPN has ever recommended the termination of a probationary employee. Moreover, the record establishes that any recommendation of suspension or termination by an LPN would require review by several levels of management. Similarly, in Colonial Manor 1977, Inc. d/b/a Wedgewood Health Care, supra, the LPNs completed the evaluation without any input or feedback from the DON, whereas in the present case, the ADON approves the evaluation before it is shown to the recipient. Thus, in light of the marked similarities of this case to the very recent cases cited above on the issue of evaluations of probationary employees, and because the cases cited by the Employer are clearly distinguishable from the instant case, I do not find the cases cited by the Employer persuasive herein.

[17] I have already described the circumstances involving the selection of the transportation coordinator above herein.

Extended Care Facilities, supra; Crittenton Hospital, 328 NLRB No. 120, slip op. at 1 (June 30, 1999); Custom Mattress Manufacturing, Inc., 327 NLRB No. 30 (October 30, 1998).

Accordingly, based on the above and the record as a whole, I find that the preparation of annual evaluations of CNAs by LPNs is not sufficient to establish that the LPNs are supervisors within the meaning of the Act.

The Employer also contends that the LPNs adjust grievances, and that such actions are an indicium of supervisory status. The record has very little reference to this issue, and the Employer, in its brief, relies primarily on testimony from the hearing in this matter in 1998. As found in the previous decision, the types of grievances described in the record are minor problems with residents or with the job. These are informally resolved by the LPN as a more experienced employee advising a less skilled employee. Aside from the informal resolution of such minor grievances, the LPNs play no role in the Employer's formal grievance resolution procedures. Such limited involvement in resolving grievances is not an indicium of supervisory status within the meaning of the Act. Illinois Veterans Home at Anna L.P., 323 NLRB 890, 891 (1997); The Ohio Masonic Home, 295 NLRB 390, 394 (1989); Beverly Enterprises d/b/a Beverly Manor Convalescent Center, 275 NLRB 943, 946 (1985).[18]

Accordingly, based on the above and the record as a whole, I find that the LPNs' involvement in the adjustment of minor problems of CNAs is not sufficient to confer supervisory status on the LPNs herein within the meaning of the Act.

The Employer also contends that the LPNs have the authority to discipline CNAs, which is an indicium of supervisory status. However, the record is clear that the LPN merely fills out the "Associate Memorandum" form indicating what the problem or shortcoming is regarding the CNA in question. The type of violation, the level of discipline and the prior disciplines received

[18] In its brief, the Employer cites Passavant Retirement & Health Center v. NLRB, 149 F.3d 243 (3d Cir. 1998), in support of its assertion that the LPNs' adjustment of grievances herein confers supervisory status on them. However, in Passavant, the issue involved complaints which could ripen into grievances cognizable under the collective-bargaining agreement covering the aides. In contrast, in the instant case, the LPNs are merely giving routine assignments and direction of work, rather than informally resolving disputes which would constitute contractual grievances.

by that employee are filled in by the ADON. Further, the LPN does not have the authority to independently suspend or terminate employees, or even to effectively recommend such actions. In this regard, ADON Lauer testified that several levels of management would review the situation before a suspension or termination would take place.

I find that the memoranda filled out by the LPNs herein are not sufficient to establish supervisory authority. The facts herein are similar to those in Illinois Veterans Home at Anna L.P., supra at 890 – 891, wherein the Board found that, by filling out such forms, the charge nurses' function was merely reportorial. In that case, the Board held that the nurses did not impose or recommend discipline, and that they had no role in deciding what, if any, discipline would be imposed. Id. The Board has found that when nurses report conduct without recommending discipline, such actions are not indicative of supervisory authority. See also, Nymed, Inc., d/b/a Ten Broeck Commons, supra, 320 NLRB at 812; Passavant Health Center, supra, 284 NLRB at 889. In the instant case, the LPNs fill out the form, and the ADON fills in the appropriate level of discipline.[19] Further, the record is clear that LPNs do not have any authority to suspend or terminate employees or to recommend such actions. Thus, the Employer has not met its burden to establish that LPNs have the independent authority to discipline employees so as to confer supervisory status on them within the meaning of the Act.

Accordingly, based on the above and the record as a whole, I find that the LPNs do not discipline or effectively recommend the discipline of employees so as to establish the possession of supervisory authority within the meaning of the Act.

The Employer next contends that the LPNs are supervisors inasmuch as they assign and direct the work of the CNAs. There was no new evidence presented at the hearing in the instant case in support of this contention. As I found in the Decision in 1998, in order to satisfy

[19] At the hearing, there was much discussion concerning whether LPNs could go into CNAs' personnel files. While the Employer's witnesses stated that the LPNs were permitted to do so, the LPNs who testified indicated that the first time they were aware of this was the day of the hearing. Clearly, the LPNs have never considered it their role to look in personnel files to see what, if any, action should be taken as a result of the Associate Memorandum.

the statutory mandate of Section 2(11) of the Act, the assignment and direction of work must require the use of independent judgment, rather than being merely routine. Nymed, Inc., d/b/a Ten Broeck Commons, supra. The record does not support the conclusion, as urged by the Employer, that the LPNs exercise independent judgment of the type necessary for a finding that they possess and exercise supervisory authority in the instant matter. Rather, the LPNs, by virtue of their specialized training, have responsibilities to perform more skilled patient care, including preparing and passing medications, updating charts and conferring with physicians. The work tasks of the LPNs when directing the CNAs are all related to the quality of care. The Board has repeatedly emphasized that the direction of lower skilled nursing assistants in providing routine care is not supervision within the meaning of the Act. Illinois Veterans Home at Anna L.P., supra; Rest Haven Living Center, Inc., d/b/a Rest Haven Nursing Home, 322 NLRB 210 (1996); Providence Hospital, supra, 320 NLRB at 733.

With regard to the assignment of work duties, the LPNs in the instant case merely insert the names of the CNAs assigned to the shift into a group of duties, depending on the number of CNAs working on a given shift. The Board has held that work assignments made to equalize employees' work on a rotational or other rational basis are routine assignments. Providence Hospital, supra at 727; The Ohio Masonic Home, Inc., supra, 295 NLRB at 395. Further, the Board has held that the authority to adjust work schedules in the event of an emergency or call off, to request that an assistant work overtime, or to reschedule or postpone breaks, does not support a finding that a nurse possesses supervisory status. Illinois Veterans Home at Anna L.P., supra at 891; Rest Haven Nursing Home, supra at 211; Providence Hospital, supra at 733. The authority to make such scheduling changes in order to address patient needs is routine in nature and does not require the use of independent judgment. Providence Hospital, Id. Such limited authority of the LPNs to assign and direct the work of the CNAs does not require the use of independent judgment.

Accordingly, based on the above and the record as a whole, I find that the assignment and direction of work by the LPNs herein does not establish the possession of supervisory authority within the meaning of the Act.

Finally, the Employer contends that the LPNs should be found to be supervisors because the Employer holds them out to be supervisors. The record contains job descriptions, manuals, records of seminars attended by the LPNs, notices, policies and so forth, which purport to show that the LPNs are, indeed, supervisors within the statutory definition. However, as described above herein, the LPNs do not evaluate CNAs so as to affect their wages or job status, adjust grievances, impose discipline, assign and direct work using independent judgment, or engage in any other conduct which, in actuality, would confer supervisory status within the meaning of the Act. Rather, the role of the LPNs is confined to matters that are routine and do not require the use of independent judgment. While it is well established that it is the possession of supervisory power, rather than the exercise of such power, that determines supervisory status, it is also well established that the grant of authority, which is in practice illusory because it is never exercised, is not sufficient to confer supervisory status. Eventide South, 239 NLRB 287, fn.3 (1978); Pine Manor Inc. d/b/a Pine Manor Nursing Home, 238 NLRB 1654, 1655 (1978); Sunset Nursing Homes, Inc., d/b/a North Miami Convalescent Home, 224 NLRB 1271, 1272 (1976). Therefore, it is clear that, although the Employer presented various documents purporting to confer supervisory authority on the LPNs, in practice, the LPNs do not possess such authority and consequently do not exercise it. Moreover, in comparing the ratio of RNs and LPNs to the number of CNAs, the ratio is approximately 33 nurses to 40 CNAs, or approximately 1:1.2. Were the LPNs found to be supervisors within the meaning of the Act, there would be an extraordinarily high ratio of supervisors to employees.

Thus, based on the above and the record as a whole, I find that the LPNs herein are not supervisors within the meaning of the Act.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Shippenville, Pennsylvania, facility; excluding the Administrator, Director of Nursing, Assistant Director of Nursing, registered nurses, activities director, social service director, dementia unit director, maintenance supervisor, environmental services supervisor, dietary service supervisor and dieticians, registered nurse assessment coordinator, central supply/medical records clerk, bookeepers, all service and maintenance employees, all office clerical employees and guards, professional employees and other supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.[20] Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to

[20] Pursuant to Section l03.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to l2:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[21] Those eligible shall vote whether or not they desire to be represented for collective bargaining by United Mine Workers of America, AFL-CIO, CLC.

Dated at Pittsburgh, Pennsylvania, this 29th day of June 2000.

/s/Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

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[21] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (l966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (l969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room l50l, l000 Liberty Avenue, Pittsburgh, PA l5222, on or before July 6, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.